

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)

Implementation of Section 6002(b) of the)
Omnibus Budget Reconciliation Act of 1993)
Annual Report and Analysis of Competitive)
Market Conditions With Respect to)
Commercial Mobile Services)

WC Docket No. 07-71

REPLY COMMENTS OF T-MOBILE USA, INC.

T-Mobile USA, Inc. (“T-Mobile”)¹ hereby submits its reply comments on the Commission’s Public Notice (“Notice”) regarding the state of competition in the commercial mobile radio service (“CMRS”) industry.² The Commission intends to use the information gathered in this proceeding to produce its twelfth annual report on competitive market conditions in the CMRS marketplace (“Twelfth CMRS Competition Report”).³ As the Commission has found year after year, the CMRS marketplace is vibrantly competitive, and wireless carriers, including T-Mobile, continue to introduce new and exciting services, technologies, and pricing options. Nevertheless, T-Mobile is concerned about several issues that have the potential to

¹ T-Mobile holds licenses covering more than 275 million people in 46 of the top 50 U.S. areas and currently serves more than 25 million customers. Via its HotSpot service, T-Mobile also provides Wi-Fi (802.11b) wireless broadband Internet access in more than 8,400 convenient public locations, such as Starbucks coffee houses, airports, and airline clubs, making it the largest carrier-owned Wi-Fi network in the world.

² Public Notice, WTB Seeks Comment on CMRS Market Competition, WT Docket No. 07-71, DA No. 07-1652 (rel. Apr. 6, 2007).

undermine the wireless industry's focus on innovation and providing quality services to consumers.

In particular, the inability of CMRS providers to purchase essential special access services at reasonable rates, terms, and conditions threatens the development of both intramodal and intermodal competition.⁴ Similarly, while both new entrants and existing carriers were extremely successful in acquiring needed spectrum in the recent Advanced Wireless Services ("AWS") auction, any delays in relocating the incumbents currently occupying those bands will slow the deployment of wireless broadband services. Finally, the prospect of state governments becoming enmeshed in every aspect of wireless carriers' relationships with their customers has the very real potential to retard consumer-driven competition.

I. THE MARKET FOR SPECIAL ACCESS SERVICE IS NOT COMPETITIVE, RESULTING IN INCREASED COSTS TO CMRS CONSUMERS

T-Mobile and other CMRS providers depend on wireline special access services to knit together their networks. These special access services, and especially the crucial initial links from cellular base stations to incumbent local exchange carrier ("ILEC") central offices, are generally available only from a single provider—the ILEC itself.⁵ For example, T-Mobile has no choice but to purchase 96 percent of its special access local loops and interoffice transport

³ See 47 U.S.C. § 332(c)(1)(C) (directing the Commission to review and report on the competitiveness of the CMRS marketplace on an annual basis).

⁴ T-Mobile and other CMRS providers depend on wireline special access services, such as DS1s, to knit together their networks. These special access services, and especially the crucial initial links from cellular base stations to ILEC central offices, are generally available only from a single provider – the ILEC itself.

⁵ See *CMRS Market Competition*, Sprint Nextel Corporation Comments, WT Docket No. 07-71, at 3-5 ("Sprint Nextel Comments") (noting that AT&T Wireless pays over 90% of its transport costs for ILEC special access and that Nextel obtains only about 3% of its cell-site DS1 circuits from competitive suppliers).

(DS1 lines) from ILECs. As T-Mobile has noted in other proceedings, because of the lack of special access competition, it is essential for the Commission to oversee ILEC special access services effectively.⁶ Such oversight is especially important when T-Mobile or others are both customers of ILECs for special access and competitors of their wireless affiliates.⁷ With no competition to control rates, some purchasers of special access may have to curtail their offerings, slow broadband deployment, or increase consumer costs to accommodate the exorbitant special access fees. For these reasons, T-Mobile joins with Sprint in urging the Commission to take action to “eliminate [ILEC] control of [the special access] market and its resulting negative impacts on wireless competition and consumers.”⁸

II. CONTINUED COMPETITION IN THE CMRS MARKETPLACE DEPENDS ON A PROMPT RESOLUTION OF THE AWS RELOCATION PROCESS

The AWS Auction was a resounding and unqualified success, raising \$13.7 billion for the American public, providing essential resources to existing carriers, and paving the way for a variety of new entrants into the wireless marketplace.⁹ T-Mobile was the auction's top bidder—spending \$4.2 billion for 120 licenses that, for the first time, provide T-Mobile with a true, nationwide footprint. With this new spectrum, T-Mobile can now turn its attention to enhancing its coverage and launching advanced voice and data services that will benefit American

⁶ See Comments of T-Mobile, WC Docket No. 05-25 (June 13, 2005); Reply Comments of T-Mobile, WC Docket No. 05-25 (July 29, 2005).

⁷ See, e.g., Response of T-Mobile, WC Docket 06-74 (Jun. 20, 2006) (regarding the merger of Bellsouth and AT&T); Response of T-Mobile, WC Docket No. 05-65 (May 10, 2005) (regarding the merger of SBC and AT&T); Response of T-Mobile, WC Docket No. 05-75 (May 24, 2005) (regarding the merger of Verizon and MCI).

⁸ Sprint Nextel Comments, at 9.

⁹ The auction revenue collected from the AWS Auction nearly equals the approximately \$14 billion in total revenue from all previous FCC auctions combined.

consumers. These services are an exciting and integral part of T-Mobile's future, and they further the FCC's goal of ubiquitous availability of broadband access for all Americans.¹⁰

Before T-Mobile can put its spectrum to use, however, it must first coordinate with—and, in many instances, relocate—current spectrum incumbents in the 1.7 GHz and 2.1 GHz bands.¹¹ In the 1.7 GHz band, T-Mobile must coordinate with 12 federal government agencies and may not interfere with the operations of these agencies prior to their relocations.¹² Under the Commercial Spectrum Enhancement Act (CSEA), the costs for relocating these federal agencies will be paid for entirely out of AWS auction proceeds.¹³ T-Mobile may commence operations under “transitional sharing” before the agencies relocate, as long as it avoids harmful interference.¹⁴

In the 2.1 GHz band, T-Mobile must relocate commercial point-to-point fixed microwave service (FS) links, which are licensed to private licensees and common carrier licensees, as well as Broadband Radio Service (BRS) incumbents. Unlike the federal incumbents, T-Mobile is responsible for relocating the FS and BRS incumbents (either on a system-by-system or link-by-link basis) and covering the costs of the relocation.

¹⁰ See *Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks*, WT Docket No. 07-53, Declaratory Ruling (rel. Mar. 23, 2007) at ¶ 2.

¹¹ MetroPCS also notes that “it will take concerted action by both government and private industry in order for this clearing process to be accomplished in a timely fashion so that the pro-competitive aspects of the AWS allocation can be enjoyed.” *CMRS Market Competition*, MetroPCS Comments, WT Docket No. 07-71, at 9.

¹² See 47 C.F.R. §§ 27.1134(a) et seq.

¹³ Commercial Spectrum Enhancement Act Report to Congress on Agency Plans for Spectrum Relocation Funds, the Office of Management and Budget, dated February 16, 2007, issued pursuant to section 204 of the Commercial Spectrum Enhancement Act, 47 U.S.C. § 928(d)(2).

Over the past year, T-Mobile and others in the wireless industry have worked closely with Congress, the Commission, the National Telecommunications and Information Administration ("NTIA"), the Office of Management and Budget ("OMB"), and individual agency staff members to ensure that the post-auction transition runs smoothly. T-Mobile is eager to move forward on the process outlined by Congress, the Commission, and NTIA to make this spectrum available for commercial use as soon as possible. Accordingly, it urges the Commission, to assist in ensuring that the AWS coordination and relocation process proceeds in a timely manner, so that CMRS competition may continue to flourish through the competitive deployment of advanced services in the 1.7 and 2.1 GHz bands.

III. STATE-BY-STATE REGULATION IS UNNECESSARY AND HARMFUL TO CMRS COMPETITION AND CONSUMERS

The growth and innovation in the wireless sector has been fueled in large part by Congress' determination that wireless services should be regulated primarily at the federal level and with a light touch.¹⁵ Not only does burdensome regulation have a chilling effect on network deployment, raise the cost of services, and divert funds that could be used to create additional products and services,¹⁶ it is wholly unnecessary in this competitive environment. As a matter of

¹⁴ All AWS licenses include a condition that the licensee cannot cause harmful interference to the federal user until that incumbent's authorization has been terminated by the NTIA.

¹⁵ See 47 U.S.C. §§ 332(c)(1) and 332(c)(3)(A). Section 332(c)(3)—entitled "State Preemption"—provides that "no State or local government shall have any authority to regulate the entry of or the rates charged by any commercial mobile service . . ." This provision permits states to petition the Commission for authority to regulate CMRS rates, and requires the Commission to grant such petition if the state can demonstrate that market conditions fail to protect consumers from unjust and unreasonable rates. A number of states filed petitions under section 332(c)(3)(A) in 1994, but the Commission denied them on the ground that the states had failed to demonstrate market failures.

¹⁶ See, e.g., *2000 Biennial Regulatory Review: Spectrum Aggregation Limits For*

business strategy, the wireless industry is taking a variety of pro-consumer actions, including simplifying bills, providing detailed customer disclosures, offering prospective customers coverage assessments down to the neighborhood level, and resolving complaints promptly and effectively. Based on these initiatives, T-Mobile has been awarded five consecutive J.D. Power and Associates awards for overall customer satisfaction across all six regions of the country, and four consecutive awards in wireless retail sales satisfaction.¹⁷ In addition, for the fifth consecutive reporting period, T-Mobile has been recognized as the leader in customer care.¹⁸ But, T-Mobile cannot rest on its laurels—other carriers are actively seeking to unseat T-Mobile from its number one position through the introduction of new customer care features and improved response to consumer complaints.

Notwithstanding the complete absence of a market failure that would warrant departure from the Commission's hands-off regulatory approach, a number of state commissions and legislatures recently have indicated their interest in overseeing all aspects of the carrier-customer

Commercial Mobile Radio Services, Report and Order, 16 FCC Rcd 22,668 at 22677-79 (2001) (discussing Congress' and, consequently, the Commission's, preference for deregulation over regulation); *Federal-State Joint Board on Universal Service, Report to Congress*, 13 FCC Rcd 11,501 at 11,540, n.170 (1998) (regulation of ISPs would stifle development of new technologies and services); *TCI Cablevision of Oakland County, Inc., Memorandum Opinion and Order*, 12 FCC Rcd 21,396 at 21,441-42 (1997) (regulatory over-reaching by localities discourages competition and introduction of new services).

¹⁷ See http://www.tmobile.com/company/PressReleases_Article.aspx?assetName=Prs_Prs_20070419&title=TMobile%20Continues%20to%20Lead%20the%20Way%20in%20Wireless%20Customer%20Satisfaction; http://www.tmobile.com/company/PressReleases_Article.aspx?assetName=Prs_Prs_20070510&title=T-Mobile%20Sets%20a%20Standard%20for%20Wireless%20Retail%20Service.

¹⁸ See http://www.t-mobile.com/company/PressReleases_Article.aspx?assetName=Prs_Prs_20070125&title=T-Mobile%20USA%20Continues%20to%20Earn%20Highest%20Ranking%20in%20Wireless%20Customer%20Care%20by%20J.D.%20Power%20and%20Associates.

relationship, and several states and consumer organizations regularly urge the Commission to adopt its own invasive policies at the federal level. Similarly, the plaintiffs bar has become increasingly aggressive in attacking wireless carrier practices involving the establishment of rates and rate structures.

Although, as CTIA notes, “[t]he Commission has attempted to fulfill the goal of promoting competition in several post-1993 decisions regarding the regulatory treatment of CMRS services,” T-Mobile shares CTIA’s view that the Commission can, in the current marketplace, do more to encourage the growth of competition.¹⁹ In particular, T-Mobile urges the Commission to take an active role in advising state governments on the scope of their regulatory authority under the Communications Act and promptly providing its interpretation of the statutory language when states attempt to regulate wireless rates and entry. In addition, if state intrusion into the “other terms and conditions” of wireless service threatens to undermine the national deregulatory framework established by Congress, the Commission should exercise its conflict preemption authority. Finally, the Commission should decline to impose the detailed regulatory mandates some groups seek and instead should continue to rely on the marketplace to protect consumers and allow them to enjoy the benefits that only competition can bring.

¹⁹ CTIA Comments at ii.

CONCLUSION

The wireless marketplace is robustly competitive and wireless consumers have myriad choices in providers, services, features, and pricing plans. T-Mobile nonetheless encourages the Commission to consider the potential threats to sustained innovation and growth discussed above, and to take all actions necessary to ensure that subsequent Competition Reports continue to reflect these positive trends.

Respectfully submitted,

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